

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO. 5:19-CR-00012-KDB-DSC**

UNITED STATES OF AMERICA,

v.

TEVIN JEROME GAITHER,

Defendant.

**FINAL ORDER AND
JUDGMENT CONFIRMING
FORFEITURE**

THIS MATTER is before the Court on the United States of America's Motion, (Doc. No. 48), pursuant to Federal Rule of Criminal Procedure 32.2(c)(2), requesting that the Court enter a Final Order and Judgment confirming forfeiture of three firearms identified in the Preliminary Order of Forfeiture, (Doc. No. 23), in this case. For good cause shown and based on the preponderance of the evidence and the law identified herein, the Court will grant the motion. In support of granting the motion, this Court finds as follows:

I. BACKGROUND

Multiple items—specifically, five firearms and a sum of currency—were seized during the investigation of Defendant Tevin Jerome Gaither, for which the Government sought forfeiture. *See* (Doc. No. 3: Bill of Indictment, at 7-8). Upon Defendant's consent, the Court entered a preliminary order of forfeiture for these items. (Doc. No. 23). Of the seized items, \$1,967.00 was applied to Defendant's NCDOR drug tax (Doc. No. 30) and the Tarus and Jimenez firearms were stolen (Doc. No. 31). Therefore, there is no need for an order of forfeiture regarding those items.

From July 24, 2019 through August 22, 2019, the United States published, via www.forfeiture.gov, notice of this forfeiture and of the intent of the Government to dispose of the forfeited property according to the law, and notice to all third parties of their right to petition the Court within sixty days of July 24, 2019 for a hearing to adjudicate the validity of any alleged interest in the property. (Doc. No. 34). The United States also sent direct notice to individuals who reasonably appeared to be potential claimants of the property. (Doc. No. 29).

On August 20, 2019, Antoine Tyler filed a petition to a Glock 41, .45 caliber pistol, serial number YEV520 seized from Gaither. (Doc. No. 33). Tyler's petition was the only third-party petition filed. The Court dismissed Tyler's petition for lack of prosecution and discovery non-compliance on April 28, 2020. (Doc. No. 47).

II. DISCUSSION

Pursuant to Rule 32.2(c)(2), “[w]hen the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights.” *See Dillon v. United States*, No. 3:13-CR-295-K(5). 2018 WL 3820228, at *2 (N.D. Tex. Aug. 9, 2018) (“The Court later entered a final order of forfeiture—under Rule 32.2(c)—because a third party had asserted some interest in the property that Dillon had forfeited.”); *United States v. Moser*, 586 F.3d 1089, 1095 (8th Cir. 2009) (noting that “the Government does not possess clear title to the seized property until after the conclusion of § 853(n) proceedings”).

The ancillary proceeding in this case has ended, and the sole third-party petition filed has been dismissed. No other individuals have filed petitions and the time for doing so has expired. Thus, in accordance with Rule 32.2(c)(2), this Court may now issue a Final Order to give the Government clear title to the firearms at issue for disposition in accordance with law. *See United States v. Hopkins*, No. 3:07-153-JFA, 2009 WL 9054954, at *3 (D.S.C. Sept. 4, 2009) (if only claim is

dismissed, Government has clear title pursuant to Section 853(n)(7)); *United States v. Su*, No. 11-cr-00288-JST-1, 2015 WL 925930, at *2 (N.D. Cal. Feb. 27, 2015) (entering final order of forfeiture under Rule 32.2(c)(2) when only claim is denied on the merits).

III. ORDER

It is therefore **ORDERED**:

In accordance with Rule 32.2(c)(2), the Consent Order and Judgment of Forfeiture is confirmed as final as to the following property:

One Glock, Model 19, .9 caliber pistol, serial number BDU442, and ammunition, seized on or about December 17, 2017 during the investigation;

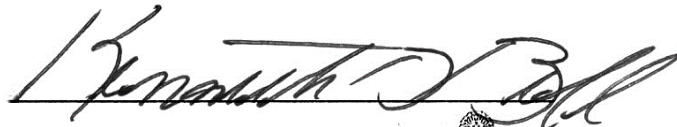
One Zastava Serbia MDLP rifle, serial number M92PV053579, and ammunition seized on or about December 17, 2017 during the investigation; and

One Glock, Model 41, .45 caliber pistol, serial number YEV520, and ammunition seized on or about August 27, 2018 during the investigation.

All right, title, and interest in the property, whether real, personal, or mixed, has therefore been forfeited to the United States for disposition according to law pursuant to Federal Rule of Criminal Procedure 32.2 and 21 U.S.C. § 853, and the United States shall have clear title to the property and may warrant good title as set forth in 21 U.S.C. § 853(n)(7).

SO ORDERED.

Signed: June 9, 2020



Kenneth D. Bell
United States District Judge

